

Sewage Handling and Disposal Advisory Committee
February 11, 2011
FINAL Meeting Minutes

Meeting called to order by Allen Knapp who introduced Vincent Day as the new Chairman and turned the meeting over to Mr. Day.

Members present: Todd Benson, Mike McCulley (for Colin Bishop), Greg Evanylo, Raymond Freeland, David Fridley, James Hall, John Harper, Peter Kesecker, Allen Knapp, R. V'lent Lassiter, Robert Lee, Mike Lynn, Curtis Moore, Joel Pinnix, James Pyne, Valerie Rourke, Bill Timmins and Robert Wadsworth.

Visitors present: John Aulbach, Jim Bowles and Patrick Bolling, VDH; Bob Mayer-American Manufacturing; Reed Johnson- Orenco; Tom Ashton- AMC.

New members recognized: Curtis Moore (VOWRA) and Mike Lynn (Home Builders Association)

Administrative

Agenda Review:

- Additional items for agenda: Bill Timmons – Public Outreach/Education and Allen Knapp – discussion of term 'modify' in Civil Penalties Regulations.
- No objections to additions
- Agenda approved with modifications

Review minutes: Minute review will be deferred to next meeting

Old Business

1. Regulatory Update on Related Regulations

Allen Knapp discussed current VDH regulatory actions.

- o Several regulations were opened due to Periodic Review: Marina Regulations, Alternative Discharge Regs, Fee Regs, and Private Well. All will go forward for updates.
- o Onsite Sewage Regulations - waiver requested from Governor's office to proceed under 2008 NOIRA
- o Civil Penalties – Governor asked VDH to consider comment on definition of 'modify'
- o Indemnification Fund – Governor asked VDH to go back and look at mainly inhouse legal questions.
- o Well Regulations were opened mainly to address geothermal and mandatory storage and yield for private wells. – Well Association had comments and VDH is working to address those comments.
- o Total of 8 sets of regulations in process of adoption/revision

Discussion: Bob Lee - There are inconsistencies in the Civil Penalties bill – things that are problematic with AOSS regs that may need to be modified. Things that specify 'without a permit' so problems that occur for other than 'without a permit' cannot be found.

Vincent Day suggested adding the topic to the agenda as a separate item and all agreed.

2. Other Old Business

General Assembly Update – Allen Knapp

- HB 1626 (Knight) allows owner to obtain a permit for a voluntary upgrade. Genesis is selling property and mortgage company requires an inspection of the septic system. If a concern is noted (ie someone inspects and declares it 'failing') then is not certified to mortgage co. The Owner files an application for repair, but if the site conditions don't meet current regulations, VDH can't issue a permit under new construction and can't issue a 'non-conforming permit' under the repair clause in SHDR because site does not meet SHDR definition of failure. This bill will eliminate that issue. Allows VDH to issue a non-conforming permit to any owner as long as not failing. The Owner can upgrade, but not necessarily to extent required. Bill invokes the waiver to pressure dosing for current owner. Bob Lee – will 'upgrade' be defined
- HB 2185 (Lewis) – mandates private professional to do site evaluations. Left in committee with understanding that VDH to convene a study to how to transition to a fully private evaluation and design program.
- SB 1277 (Obenshain) – changes to 163.6 – stricken at the request of the patron
- SB 2492 (Hugo) would establish O&M exemption for all AOSS prior to 1/1/2010 <1000 gpd or less. Bill was amended to once per 2 years inspection with exemption sunset of 2014. Failed to be engrossed so not proceeding at this time.
- Also tracking
 - Hanger –1427: to encourage incentives for water reuse
 - Stewart – 1056: develop policy to eliminate surface discharges – substitute to eliminate 50% by 2020
 - 1265, 1734: licensed soil scientists
 - SJ 334 to study expansion to nutrient credit exchange program
 - HB 1492 – well providers and geothermal wells
 - HB 1969 : Allow contractors to issue civil penalties for sewer violations – not directly applicable for onsite
 - Utilities 2326: covers waterworks – changes bonding requirement
 - 1021: agencies the review water permits – right now 45 days to review – if agency missed 45 days then deemed to approve

No other old business.

New Business

1. Voting status of VDH Employees Representing Outside Agencies

All agreed that they can vote – only ex officio members cannot vote

2. Review of Comments on the Replacement Alternative Onsite Sewage System Regulations

- Allen Knapp - OEHS has requested a 6 month extension on the emergency regulations, but have not gotten a response yet. Board of Health has meetings in March and June. VDH is targeting the June meeting to present the final replacement regulations. VDH would like committee's approval and consent to try to develop consensus on most important issues. VDH will get a draft of the final reg to committee and VDH management in time to read before BOH meeting. It will not have another comment period, and it is being shared as a courtesy. The regulation must stay on schedule. Once we turn it over to AG, we are not in a position to make changes other than typos.
- Bob Lee – depending on extent of changes may need another comment period? Yes
- Allen Knapp - VDH would like to meet with the Advisory Committee on March 18th and April 1st to review most critical comments and obtain input from the Committee. Final minutes from those meetings would be available April 8th and have a draft of the regulation available by May 6. Committee is reminded that this is not an opportunity to bring new comments. VDH is limited to addressing the comments received during the public comment period.
- Joel Pinnix – what about the other comments received via other methods than Town Hall ? Allen Knapp – we'll get rest out to the committee
- Vincent Day called for vote on the proposed dates of March 18 and April 1. Dates approved. (Jim Pyne can't make second date.)

Sticky Dot Exercise to Focus Discussion for Committee

- Dwayne Roadcap led discussion. Noted that VDH has to review and respond to each individual comment in the Townhall Document 03 (TH03). Those draft responses will be shared with the committee.
- Dwayne Roadcap developed categories of the comments and listed them on poster pages for consideration. Additional topics were requested and received from the Committee.
 - Valerie Rourke – Add spray irrigation to jurisdiction/Authority Issues
 - Bob Lee - reporting to local government, from VACO—publish on web anyone who isn't in compliance within 30 days after notice
 - Allen Knapp - remote monitoring and reporting—have more of it, expand requirements
 - David Fridley - current and proposed regs have conflicts, allow spec of fill material to obtain separation to limiting feature, SHDR define vertical separation using natural soil—where is the stop and start point

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- Mike Lynn - comment about redefining the “limiting layer” anything >120 would be impermeable
- Valerie Rourke – Add Large AOSS, treatment requirement for groundwater recharge to Direct Discharge
- Added new category - Infiltration testing & limiting features
- Mike Lynn - eliminate perc rates & go to Ksat only, define infiltration testing procedures
- Curtis Moore - where you would test (Philosophy of Evaluation)
- Joel Pinnix suggested removing authority issues if committee has limited input. – committee agreed.
- Bob Lee suggested addition of program management

The final categories of comments received during public notice for consideration by the Committee are as follows. Each Committee member was asked to identify their top 3 categories by placing a sticky dot next to the category. The total number of dots received for a category is listed next to the category heading:

- TL2/TL3/NSF 245 5* Total
 - Listing procedures (2*)
 - Definition (1*)
 - Loading rate differences (1*)
 - Ability to test ‘treatment works’ for n removal
 - Add fecal limit to TL 3(1*)
 - Eliminate 5 yr evaluation
 - Use NSF 360
- O&M General (1*) 3* Total
 - O&M Manuals for existing system
 - Definition of maintenance/repair-replace worn out components (1*)
 - Contracts
 - Repairs within x basis
 - Reportable incident definition (1*)
- Large AOSS effluent Quality 3* Total
 - STE should not be prohibited (1*)
 - Eliminate specific N limits (2*)
 - Rainfall and dilution is very specific so 50%in our policy is not correct for all sites.
- Direct Discharge 9* Total **See below**
 - Should maintain separation (6 inches) (1*)
 - No discharge at all
 - Performance Requirements too strict (4*)

- Internal conflicts on how to measure vertical separation – allow fill to create vertical separation(point where effluent hits the soil to the limiting feature, clarify the definition **See below**)
 - Definitions – redefining the limiting layers
 - Large AOSS -Add treatment Requirements for ground water recharge (4*)
- O&M Reporting/compliance 5* Total
 - Is database(VENIS) appropriate (1*)
 - Sample/Reporting for small AOSS
 - Public reporting of compliance (publish on web, local govt notification)(1*)
 - Sampling for smalls should go away for generally approved
 - Lack of civil penalties and enforcement undefined (2*)
 - Remote Monitoring-Expand requirements and Use
 - **Program Management for AOSS (10*) see below-**
- Jurisdictional/Authority Issues (*outside scope of discussion*)
 - Should limit N from conventional
 - Wetland discharge
 - Direct discharge to GW
 - Performance vs prescriptive
 - Point of compliance
 - Financial assurance
 - Spray Irrigation
- Nitrogen Bay 10* Total
 - Modify applicability (3*)
 - Verify NSF 245 (field testing) (1*)
 - Do not prohibit dilution (4*)
 - N too strict for smaller large systems (say 1000 to 10000) (2*)
 - No BMPs or calculation design – treatment only
 - Include conventional (authority issue)
- Infiltration Testing - Limiting Features (3*) 9* Total
 - Eliminating perc rates
 - Define infiltration testing procedures
 - Go to Ksats only – only thing reproducible
 - Conflicts on Vertical separation – how to define (4*)
 - Naturally occurring soil
 - Use of Fill
 - Where to test – philosophy of evaluation (2*)

Members completed the exercise. The results will be presented to committee later and will be used to plan the meetings on March 18th and April 1st. Committee will come back to this discussion if time.

3. Product approval Process for TL-2 and TL-3 Systems

- Colin Bishop not at meeting. His replacement, Mike McCulley noted that since it is likely to be a topic at one of the next two meetings, he'd like to defer the topic till then.
- Joel Pinnix motioned to table the discussion. Approved to table the discussion.

4. Outreach Education

- Bill Timmins - expressed concerns about education and outreach. As a private citizen, taking information back to a community and finding people don't even understand even conventional systems. Need a larger educational effort through local, community organizations. We need to go out to homeowners and educate them, get them more involved. Lots of information on web, but not in one place. Idea is to work through lake associations and other citizen groups that would utilize display boards put together by VDH, stored in VDH, and lent out to various groups. Would help people understanding why they need to maintain their system. Looking for direction from this committee.
- Allen Knapp – Commissioner is very interested in getting educational program going that didn't require a lot resources from the agency by partnering with organizations such as realtors or lake associations to get info into hands of homeowners. Challenge is getting money to fund/print stuff; VDH would look for partners to get things done
- Bob Lee – at EPA put together brochure and made it available so that folks could print out as many as possible.
- Greg Evanylo– as VT and cooperative extension – usually is involved in this, but cutbacks so don't have the resource. There are other states that have active programs, such as David Lindbo at NC State that may have some resources that we can use. NC State soil science for general info. Specifics to NC regs would have to be eliminated.
- V'Lent Lassiter has some 101 Septic information on their (Chesapeake Bay) website – basic operation of septic systems – can email link
- Mike Lynn – brochure from DEQ/DCR/VDH/Northern VA planning committee. Etc that is a 4 page printout that may help. Find someone to print and it's a good start – Quick guide for homeowner septic systems – Anish worked on it. Will send it
- Valerie Rourke– National Small Flows Clearinghouse has information too
- Bill Timmins – wants to bring it all together – with maybe 20 display boards stored in VDH offices around the state that could be lent out - maybe get a student

from Ferrum College or other to help develop it. He is interested in working on it and

- Allen will follow up with Dr. Remley on her specific ideas – maybe formulate her plan. Maybe Bill could assemble as much of that information as possible and bring it back. Get to where we could work up a pilot project.
- Greg Evanylo– problem is having people to do this, it's time consuming
- Reed Johnson– VDH can rely on the manufacturer and other groups to do presentations and they educate public too, so maybe they could be a part of it
- Joel Pinnix– motion to create an outreach subcommittee with Bill as head. Can see an outreach page on VDH website for homeowners, etc.
- Jim Pyne second the motion and commented that public support is needed for AOSS program and education is the key
- Vote – all in favor , no nays
- Volunteers for subcommittee: Bill Timmins – Chair; V'lent Lassiter, Jim Pyne, Reed Johnson (rjohnson@orengo.com 757-345-5970), Allen Knapp

5. Civil Penalty Regulation Discussion

Allen Knapp referred to Section 60 of the Civil Penalty regulations. A comment was received that the term 'modify' must be defined. By way of discussion 'maintenance' is defined in Code and in the Emergency Regulations as in-kind replacement of components/parts as result of normal wear and tear. It does not include the replacement of distribution boxes, tanks, etc. which require a licensed installer. So need to leave maintenance untouched.

SHDR requires you to obtain permit to 'modify' the system - is replacing the tank 'modifying' the system?

David Fridley noted that GMP 122 has a specific definition for 'modification' which VDH may want to avoid which has to do with proprietary products.

Jim Pyne noted that the SCAT regs have a definition of 'modification'. Marcia Degen clarified that in the Sewage Collection and Treatment Regulations (SCAT Regulations), the definition of 'modification' is use to clarify when an owner needs to apply for a Certificate to Construct. The language is vague and discusses a 25% change in capacity or ability of a wastewater treatment works.

If the difficulty is with the word 'modify' can it just be eliminated?

Curtis Moore - there's a distinction between the permit to operate and the permit to do a modification. This section doesn't refer to the owner of the system.

Mike Lynn – would someone who modifies be an operator? For example, it's common for an operator to have to operate a system above its daily rate when the homeowner has parties, in excess of operations permit and he's licensed to do, but not permitted. Is that a modification?

Joel Pinnix – On the construction permit application there is a check box for repair, modification, or new, so if we add modify, need to add 'repair' to it as well.

Allen Knapp– if struck word 'operate' and inserted 'place into operation' so illegal act would be to put a system into operation without a permit and that would not ensnare the operator into that scenario
But does not take care of 'modify' term

Todd Benson – since operators are not permitted, the system is, then eliminating the term 'operate' should work. He reads it as if the system is not permitted, then it's a violation

David Fridley - From GMP 122 A system "modification is defined as any alteration to a properly permitted system which adds, deletes, or substantially alters the design of the system as originally permitted without expanding the capacity of the system or adding additional absorption area."

Joel - maintenance is adjustments – if you need to adjust timer – that's maintenance (Jim Pyne says that's operations), but that's not a modification.

Mike Lynn - Should it have physical in the definition?

Joel Pinnix – violations for 610 and 640 are listed in the regulation, but 613 not listed. Would be cleaner to have it specifically listed in the regulations even if 613 is supplemental to 610.

Mike Lynn – is the onus on the owner to operate and maintain – and is that responsibility being transferred to the operator? what about 30 year old systems?

Todd Benson - change "without" to 'inconsistent with' – which would cover permitted and nonpermitted sites.

Allen Knapp – 1 is intended to be someone who installs a systems without a permit and an owner who puts an unpermitted system into operation; example - someone who cuts line and lets sewage run on the ground. All things that now only fall under criminal would go into the category. Not intended to do anything with operator. Reference to section 60 is wrong, should be 50.

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Vincent Day – it's a criminal act any way, but this would add a civil fine.

Allen Knapp – intent to let folks know what they can get fined for.

David Fridley – 'upgrade' is a potential problem so may need to define it – need to clarify this.

Is there anything you would do to a system that would not require an installation permit? If so the word modify is redundant.

Curtis Moore – swaps out a pump, no permit required, but could substantially change the operation. If someone were to cut the distribution line and funnels all of the wastewater to the ditch it's a modification that is not permitted.

Joel Pinnix offered a definition of modify: Physically or chemically alter the permitted treatment works including upgrade or repair, specifically excludes maintenance. Suggests using treatment works instead of onsite sewage system because there is no definition of what an onsite sewage system is. Treatment works is in the Code.

David Fridley looked at definition in GMP 122 again and asked do we need properly permitted in there.

"modification is defined as any alteration to a ~~properly~~ permitted (or permitted by the Commissioner) system treatment works which adds, deletes, or substantially alters the design or function of the system as originally permitted without expanding the capacity of the system or adding additional absorption area."

"any alteration to a treatment works which adds, deletes or substantially alters the design of the system"

Additional discussion and language suggestions

"physically or chemically alter the permitted treatment works"

"physically or chemically alter the permitted treatment works including upgrade or repair, specifically excluding maintenance."

Discussion ended at this point as VDH felt they had sufficient suggestions from the Committee to proceed.

6. Additional Civil Penalties Discussion – Bob Lee

In the rule, all of penalties are for doing something without a permit. Loudoun County find permitted systems, but system not operating properly – where's the civil penalty to address that issue? Not necessarily a failure- but not operating properly, but not on the ground. So should a CP involved for not getting the thing fixed or repaired. Loudoun

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dealt with it initially but it is not clear in its ordinance, as they were going to modify the county rule to follow state. So want to address serious problems, not just failures.

Discussion

Joel Pinnix - Where is the statement 'operating properly'? Bob – 613-180-3 , but no enforcement

But if the system is performing in accordance with performance standards then what?

Bob Lee - If unlawful acts is the only way to get to it then the \$25 or \$50 penalty is insufficient to motivate someone to correct a malfunctioning system.

Proper operation is required by Code, but if it's still meeting performance requirements, then it's still ok.

If they don't address the functionality issue then they'll end up with a bigger problem, but is it VDH's job to enforce operation?

Mike (BordnaMona) would encourage VA to encourage 'operating properly' – is there a notice of violation process? Refusal to comply with NOV should be a distinct category in Civil penalties

David Fridley– example operator comes to property – blower only putting out ½ the air, no sample taken, operator files that it doesn't appear to be operating properly, but no performance violation. Is it incumbent on owner to repair or on VDH to follow upon failure to properly maintain?

Allen Knapp – point of order – need to get back to Bob's original questions – VDH believes that civil penalty reg does apply to AOSS (613) reg. VDH Recognizes the Bob thinks fees too low. Under section 50 of the AOSS reg – C. failure of operator....does pick it up

Curtis Moore – lack of a civil penalty for proper operation does not protect an owner from criminal penalties so can go to higher level of enforcement

Bob Lee – appears to be weak on requiring someone to do something to prevent a failure – not operating properly or even an operator trying to circumvent the spirit of the regulation

Valerie Rourke – in section 50 . D – notes that not following the O&M comes into play as a complicating factor to a violation

Allen Knapp commented that, in deference to Bob Lee and VACO, he assumes that the item is of concern because of the limit on local authority. He doesn't think that issue has been opened by the Governor's request to address the term "modify."

2. Review of Comments on the Replacement Alternative Onsite Sewage System Regulations
Continued

Because time permitted, discussion was resumed on the public notice comments for the replacement regulation 12 VAC 5-613. Dwayne Roadcap asked for some clarification on sticky dot results.

Vertical separation – which comment in particular and what's the goal

- Conflict in definition and 80.16 – goal good understanding of how to measure
- Goal Consistent definition between the various regulations
- Includes fill material (fill vs natural soil)
- Philosophy of how to measure limiting feature, where. Classically- we don't care what it is, its all treated the same, but limiting features not the same water table, rock, permeable, etc. potential for problems because so close so need more thought on it.
- Ways to describe, where do you test, how to test, when do you test and its truly a limitation
- What is the starting/stopping point of measuring vertical separation. Like to see a consistent definition of vertical separation among different versions of regulations. Definition of a limiting feature is closely related—regardless of what it is, we treat them all the same. Need to give some thought to where, when to test to determine if it's truly a limiting feature.

Direct Discharge (Dispersal to Groundwater) too strict limits – what are the comments and what's the goal

- Less strict standards
- Realistic N levels
- Discuss standards
- Talk about changing them to what
- Different requirements for small vs large
- Just don't do it
- Permitting Authority
- Nitrification Process and use of dilution

Program Management – very broad – which are the comments and what's the goal

1. What's the comment?
 2. What do we want to gain from this discussion?
 - coordination b/W DPOR & VDH
 - + Authority w/operators on Program installation
- Loudoun had 2 pages of it – civil penalties need to use effectively and propose that civil penalties included in 613 regs for enforcement.

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- Obtaining compliance /Best methods– program is for AOSS and the goal is keep system performing as designed, how do you get back into compliance in a reasonable time frame – nothing in these regs
- Venis Capability – from the perspective of what's available – it was to be used to address outliers and track non-compliance – so VENIS does not have the ability to do that. Resources to do it by hand are not there. Ex – EHS would have to take every report and move it to another spot. Effective management would move it automatically – should flag it automatically, not require someone to touch each report
- No coordination between DPOR and VDH as far as what a licensed professional can do
- Have public notification of systems non-compliant so local public knows

Reminder that VDH can only address comments that were received during public notice so the discussion must result in a response to comments.

Motion to adjourn offered, seconded, and approved

Appendix I

**Sewage Handling and Disposal Regulation Advisory Committee
Meeting**

AGENDA

Date: February 11, 2011
Time: 10 am to 2 pm
Location: Perimeter Center
Department of Professional and Occupational Regulation Board Rm #3 on Mayland Drive. .

The following link is to DPOR's site that has a map to the building.

http://www.dpor.virginia.gov/dporweb/contact_information.cfm

Administrative

1. Approve Agenda
2. Review Minutes

Old Business

1. Regulatory Update on Related Regulations
2. Other Old Business

New Business

1. Voting Status of VDH Employees Representing Outside Interests (see attached rules) ...VEHA
2. Review of Comments on the Replacement Alternative Onsite Sewage System Regulations...VDH
3. Product Approval Process for TL-2 and TL-3 Systems...Colin Bishop
4. Other Business

Adjourn